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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1994

Addendum

MAURITIUS

[10 May 1994]

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I. INFORMATION OF A GENERAL NATURE

1. The Constitution of Mauritius, which safeguards fundamental human rights in the country, provides in its section 7 that "No person shall be subjected to torture or to inhuman or degrading punishment or other such treatment", such provisions being subject to any law authorizing punishment that was lawful on 11 March 1964, i.e., before the country's accession to independence.

2. General offences against the person, such as assaults, wounds and blows, manslaughter, murder and sexual aggression, are prohibited and punished under the Criminal Code Act, but there is no specific criminal offence for acts of torture as defined in article 1 of the Convention.

3. For the protection of children, section 5 of the Social Aid Act and article 376 of the Civil Code provide for the removal of a child who is ill-treated by his parents from their custody, under section 5 (5) of the Social Aid Act, a parent who ill-treats a child commits an offence.

4. In respect of detainees, i.e., people detained in a prison or a correctional or rehabilitation youth centre, section 36 of our Reform Institutions Act provides that "except as is provided for in this Act, no detainee shall be subjected to punishment or privation of any kind". Section 12 of the same Act provides as follows:

> "No officer shall use force against a detainee except such force as is reasonably necessary:
>
> (a) In self defence;
>
> (b) In the defence of another person;
>
> (c) To prevent a detainee from escaping;
>
> (d) To compel obedience to an order which the detainee wilfully refuses to obey; or
>
> (e) To maintain discipline in the institution".

5. In addition, section 42 of the Reform Institutions Act provides for a detainee to be placed in handcuffs or under restraint by such means as are approved by the Commissioner of Prisons, where it is necessary to prevent the detainee from escaping or to prevent him from doing injury to himself or to another person, subject however to the condition that no detainee shall be kept under restraint unless a medical officer designated by the Ministry of Health certifies that the restraint will not injure the detainee's health.

6. The Standing Orders of the Police Force as well as the judges' Rules in force in England are applicable in Mauritius and prohibit the use of force, duress or oppressive treatment on the part of persons in authority to obtain confessions.

7. Mauritius has ratified international treaties such as the African Charter of Human and Peoples' Rights and the International Covenant on Civil and Political Rights, which embody provisions similar to those contained in section 7 of our Constitution and which prohibit torture and other degrading treatment, irrespective of the status or motive of the person inflicting it.

8. In respect of matters dealt with in the Convention, section 17 of our Constitution contains provisions for the enforcement by the Supreme Court of the rights conferred under sections 3 to 16 of the Constitution, and reads as follows:

> "(1) Where any person alleges that any of Sections 3 to 16 has been, is being or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter that is lawfully available, that person may apply to the Supreme Court for redress."

9. Offences under the Criminal Code are dealt with by our District, Intermediate or Supreme Court.

10. Appeals from the lower courts are heard by the Court of Criminal Appeal or the Court of Civil Appeal, subject ultimately to a right of appeal to the Judicial Committee of the Privy Council in England.

Statistics

11. For the year 1993, of the 534 criminal cases lodged before the Intermediate Court, there were 23 cases where the admissibility of statements given by the accused party was challenged on the grounds that they had been given as a result of threats, violence, oppression, duress and inducement, and were therefore not voluntary.

12. Of the nine cases already dealt with on the issue of "Voire Dire" the Court ruled the statements admissible in eight and inadmissible in one only. Seven cases are still pending. The accused changed their plea to one of guilty in four cases.

13. Of the 23 cases, 15 involved possession or cultivation of drugs, and three concerned charges of inflicting wounds and blows causing death without intention to kill.

14. For the year 1993, 65 cases of alleged police brutality were reported, of which 28 are at the enquiry stage, 5 are sub judice, 13 have been transmitted to the Director of Public Prosecution and 19 filed for no further action. Seven police officers were interdicted from duty, two for allegedly inflicting wounds and blows causing deaths without intention to kill, four for wounds and blows causing incapacity for more than 20 days and one for abuse of authority.

15. One of the rare cases in which the police officers accused of violence against an individual were prosecuted in 1993 is that involving one Labrosse who died as a result of his injuries. The case was very widely publicized in the press and the trial, due to be heard on 5 March 1994 (CN 447/93) is still

pending before the Intermediate Court. The accused No. 1 and No. 2, both police constables, are charged with inflicting wounds and blows causing death but without intention to kill, and assault, respectively.

16. The difficulties affecting the fulfilment by Mauritius of the obligations under the Convention are mainly of an administrative nature, arising from severe staff shortage and the absence of a specialized unit at the Attorney General's office responsible for follow-up of the implementation of obligations arising under treaties ratified by the Government, for the preparation of reports and for the compilation and updating of information and statistics.

17. In practice, the prevention and elimination of acts of torture is rendered difficult by the arrogance and abusive attitude of certain police or prison officers, the lack of evidence in criminal cases, particularly in drugs cases where suspects' state of dependence on drugs is at times exploited for the purpose of extracting confessions from them, the ignorance of certain suspects of their rights, and the absence in many cases of criminal or disciplinary action against persons in authority who allegedly commit acts of torture or cruel treatment.

II. INFORMATION IN RELATION TO ARTICLES IN PART I OF THE CONVENTION

Articles 2 and 4

18. As already stated, the specific offence of torture as defined in article 1 of the Convention does not exist in our law, but acts of torture are prohibited under the wider provisions of our Constitution and are punishable under the Criminal Code.

Article 3

19. No such provisions exist in our law.

Article 5

20. Mauritius has jurisdiction over offences existing in our criminal law in the cases mentioned in paragraph 1. a but not in paragraphs 1. b and c or 2.

Article 6

21. The provisions of paragraphs 1 and 2 are already applicable in Mauritius, but not those of paragraphs 3 and 4.

Article 7

22. These provisions are already in practice in Mauritius in relation to criminal offences generally, subject to what is stated in paragraph 20 above under article 5.

23. Section 10 of our Constitution furthermore provides that

"where any person is charged with a criminal offence, then unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law".

Articles 8 and 9

24. Our Extradition Act of 1970 applies to any "extradition crime" which is defined in the Act as

"an offence against the law of, or part of a foreign State, the act constituting which would, if it took place in or within the jurisdiction of Mauritius, constitute an offence against the law in force in Mauritius and

(a) (i) in the case of a non Commonwealth country, amounts to one of the offences specified in the extradition treaty with that country;

(ii) in the case of a Commonwealth country, the maximum penalty for which is death or imprisonment for not less than 12 months; and

(b) (i) is described in the First Schedule; or

(ii) would be so described if the description concerned contained a reference to any intent or state of mind on the part of the person committing the offence, or to any circumstance of aggravation, necessary to constitute the offence".

25. The First Schedule to the Act includes offences against the person under the criminal law but does not provide for offences of torture as defined in article 1 of the Convention.

Articles 10 and 11

26. As part of their training, police and prison officers are acquainted with Police Standing Orders and the Judges Rules as applicable in England.

Articles 12 and 13

27. The investigation is carried out by the police, even where police officers are accused of having committed the acts of torture, so that there are in practice difficulties in ensuring that the investigation is carried out properly and impartially.

28. The right to complain against acts of torture exists, but again it is not easy to ensure that the complainant is protected against ill-treatment or intimidation as a consequence of his complaint.

Article 14

29. The victim of an act of torture may apply to the Supreme Court for redress under section 17 of our Constitution and may sue for damages in a civil court of law. In the case of death his dependants may obtain compensation by way of damages under the civil law.

Article 15

30. Such provisions are applicable in Mauritius as the English Judges Rules are in force there.

Article 16

31. Please refer to Part I, paragraphs 7 and 8 above.

Annex*

Constitution of Mauritius

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* This document in English, which has been received from the Government of Mauritius, may be consulted in the files of the Centre for Human Rights.